

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 18 CR 3475 WJ

ROBERT DUNSWORTH,

Defendant.

**1<sup>st</sup> UNOPPOSED MOTION TO CONTINUE TRIAL  
AND MOTION DEADLINES**

NOW COMES the defendant, Robert Dunsworth, by and through his counsel, Irma Rivas, Assistant Federal Public Defender, and moves the Court to continue the trial set for March 4, 2019.

As grounds for this request, counsel states:

1. Under the Speedy Trial Act, a trial must commence within seventy days of the Defendant's first appearance in District Court, the filing of an Information, or the return of an Indictment, whichever is later. 18 U.S.C. § 3161, subd. [c][1]. However, some delay can be excluded from this seventy-day requirement if the Defendant files pre-trial motions, if the Defendant is subjected to other, related proceedings, or if the District Court determines that the ends of justice will be served by granting the requested continuance. 18 U.S.C. § 3161, subd. [h][1][D], [h][1][B] and [h][7][A]. However, in order to justify a continuance based on the ends of justice, the record must contain a detailed explanation for why the mere occurrence of the event identified by the party seeking a continuance results in the need for additional time.

*United States v. Toombs*, 574 F.3d 1262, 1271 (10<sup>th</sup> Cir. 2009).

2. The defendant Mr. Dunsworth was arraigned in this case on January 8, 2019 before United States Magistrate Judge Karen B. Molzen on the charge of Possession of a Firearm by a Felon. Mr. Dunsworth is in the custody of the United States Marshals and housed at the Sandoval County Detention Center.

3. Discovery in this case was received January 16, 2019. There are issues as to how Mr. Dunsworth's criminal history might affect his sentence, including whether he would be sentenced as an Armed Career Criminal. Additional items of discovery were requested from the government and are pending discussion and resolution. More time is needed to further investigate this case in general and the issue of sentencing in particular. Moving forward on March 4<sup>th</sup>, 2019 would not be sufficient time for Mr. Dunsworth to make an educated decision on how to move forward with his case.

4. Mr. Dunsworth agrees, by the filing of this motion, that the period of continuance will not be included in the calculation of time within which this cause must be disposed pursuant to the Speedy Trial Act. 18 U.S.C. §3161(h)(7)(A). Failure to grant such a continuance would likely result in a miscarriage of justice. *United States v. Toombs*, 574 F.3d 1262, 1268 (10<sup>th</sup> Cir. 2009).

5. Defense counsel also respectfully requests a continuance of motion deadlines.

6. Assigned Special Assistant United States Attorney Thomas Outler does not oppose this continuance.

WHEREFORE, defendant Robert Dunsworth requests that the Court continue the trial of his cause for 60 days, or as long as the court finds appropriate.

I HEREBY CERTIFY THAT on the 15<sup>th</sup> Day of February 2019, I filed the foregoing electronically through the CM/ECF system, which caused SAUSA

Respectfully submitted,

FEDERAL PUBLIC DEFENDER  
111 Lomas NW, Suite 501

Thomas Outler to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Albuquerque, NM 87102  
(505) 346-2489

/s/ *filed electronically*.  
IRMA RIVAS, AFPD  
Attorney for Defendant

*filed electronically*